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12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 RUTH JONES, } Case No. CV 10-01075 GAF (PJWx)
16 Plaintiff, } DATE: July 26, 2010
17 v. } TIME: 9:30 a.m.
18 BARACK HUSSEIN OBAMA II, etc., } CTRM: Roybal - 740
19 Defendant. } Honorable Gary A. Feess

20

21

22 **NOTICE OF MOTION AND MOTION TO DISMISS ACTION**

23 **AND**

24 **MEMORANDUM OF POINTS AND AUTHORITIES**
25 **IN SUPPORT OF MOTION**

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27
28

1 **NOTICE OF MOTION AND MOTION TO DISMISS ACTION**

2 **PLEASE TAKE NOTICE** that on the 26th day of July, 2010 at 9:30 a.m.,

3 Defendant Barack Obama, President of the United States of America, will bring on
4 for hearing the within Motion To Dismiss, before the Honorable Gary A. Feess,
5 United States District Judge, in his courtroom located at 255 E. Temple Street, Los
6 Angeles, California, 90012. Defendant, by and through his undersigned counsel,
7 hereby moves this court pursuant to the provisions of Rule 12(b) (1) of the Federal
8 Rules of Civil Procedure, for an order dismissing Plaintiff's action against him
9 with prejudice. This motion is made upon the grounds that this court lacks subject
10 matter jurisdiction over this case because Plaintiff lacks standing to bring it, and
11 because it presents non-justiciable political questions.

12 This motion is made and will be based upon the attached Memorandum of
13 Points and Authorities, the pleadings and exhibits herein, and upon such other and
14 further arguments, documents and grounds as may be advanced in the future.

15 Attempts by undersigned counsel to comply with Local Rule 7 were
16 unsuccessful. In violation of the Local Rules, Plaintiff did not list a telephone
17 number on any document filed with the court. In an effort to schedule a
18 conference, undersigned counsel emailed to Plaintiff, at the email address listed on
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1 her complaint, a request that she participate in a conference on June 7, 2010, at
2 11:00 a.m., or, at another date and time convenient to her. Plaintiff never
3 responded to the email.

4 DATED: *6/25/10*

5 ANDRÉ BIROTTÉ JR.
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8 DAVID A. DeJUTE
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10 DATED: *6/25/11*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN**
2 **SUPPORT OF MOTION**

3 **I.**

4 **INTRODUCTION**

5 Plaintiff seeks to challenge the 2008 election of President Barack Obama by
6 requiring the President to prove that he is “a natural born citizen” within the
7 meaning of the United States Constitution. Plaintiff does not have standing to
8 pursue such a claim, and she cannot use this Court to investigate and decide the
9 President’s fitness for office without contravening the very Constitution that she
10 purports to uphold. The Electoral College and the Congress are vested with
11 exclusive jurisdiction to decide such political disputes.

12 Plaintiff also seeks to litigate in this Court a variety of vaguely defined
13 claims, including allegations that by issuing an Executive Order, by accepting the
14 Nobel Peace Prize, and by chairing a meeting of the United Nations General
15 Assembly, the President has violated the United States Constitution and
16 committed treason. Plaintiff also lacks standing to pursue these claims which are,
17 in any event, also non-justiciable.

18 Accordingly, this Court is respectfully requested to dismiss Plaintiff’s
19 complaint in its entirety and, because there is no possibility of curing the legal
20 defects, to dismiss it without leave to amend.

21 **II.**

22 **STATEMENT OF THE CASE AND SUMMARY OF ALLEGATIONS**

23 The complaint in this case comprises 59 pages, and 103 paragraphs of
24 rambling, repetitious, and at times incomprehensible allegations. Distilled to its
25 essence, this case seeks injunctive and declaratory relief from this Court
26 adjudicating the fitness and qualifications of President Barack Obama to be
27 President of the United States and adjudicating the propriety of certain conduct of
28 the President since taking office. In the Prayer For Relief (See Complaint at pp.

1 57-59), Plaintiff asks this Court to grant the following injunctive relief:

2 (1) Issue a mandatory injunction requiring President Obama to
3 demonstrate that he meets the Constitutional “natural born citizen” requirement for
4 eligibility for the office of President of The United States;

5 (2) Issue an injunction barring President Obama from continuing to be
6 President of the United States and barring him from holding the office of President
7 of the United States or any other Federal office in the future;

8 (3) Issue a mandatory injunction requiring President Obama to “remove
9 himself from the office of the President and White House within 24 hours,” with a
10 proviso that force should be used to effect such removal if necessary;

11 (4) Issue an injunction ordering Congress to arrange an “emergency
12 election for the People to elect a Constitutionally eligible President of the United
13 States” within 60 days.

14 The Prayer for Relief also seeks the following Declaratory relief:

15 (1) A declaration stating that President Obama has failed to provide proof
16 that he is Constitutionally qualified as a “natural born citizen” to be President of
17 the United States;

18 (2) A declaration that President Obama is “guilty of Treason.”

19 (3) A declaratory judgment that President Obama’s “swearing into the
20 Office of the President of the United States on January 20 and 21, of 2009, is
21 hereby null and void as if it never was.” (sic).

22 (4) A declaratory judgment that any and all Executive Orders, Treaties,
23 and all other acts made by President Obama from the date of his inauguration to
24 the present are “null and void upon the inauguration of the next President.”

25 (5) A declaratory judgment that all appointments made by President
26 Obama “will be null and void upon the inauguration of a newly elected President.”

27 (6) A declaratory judgment that “the Amended Executive Order #12425
28 is declared unconstitutional and hereby null and void.”

With respect to the request for a declaratory judgment from this Court that President Obama is “guilty of treason,” this request is apparently premised upon allegations made at various points in Plaintiff’s complaint, but chiefly centered in Count 2 thereof, that President Obama committed treason when he signed Amended Executive Order #12425, when he presided as the chairperson over the General Assembly of the United Nations on or about September 23, 2009, and when he accepted the Nobel Peace Prize in October, 2009.

The complaint makes other equally frivolous and bizarre allegations which attack the fitness, competence, and qualifications of President Barack Obama to hold office.

By virtue of the fact that Plaintiff seeks a trial in this Court regarding her contentions that President Barack Obama is not qualified to be President, based on the alleged ground that he is not a “natural born citizen” of the United States, and on the further alleged grounds of misconduct in Office as well as other allegations of misconduct scattered throughout the complaint, this case must be dismissed, because Plaintiff lacks standing, because it presents non-justiciable political questions, and for other reasons, as the following discussion will demonstrate.

III.

ARGUMENT

This Court Lacks Subject Matter Jurisdiction Of This Action

A. Plaintiff Lacks Standing Herein

The question of standing is a threshold determination concerning “whether a litigant is entitled to have the Court decide the merits of the dispute or of particular issues.” *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct 2197, 45 L.Ed.2d 343 (1975). A Plaintiff bears the burden of establishing proper standing “at the outset of its case.” *Sierra Club v. Environmental Protection Agency*, 292 F.3d 895, 901, (D.C. Cir 2002). In so doing, a Plaintiff must allege facts sufficient to satisfy the “irreducible Constitutional minimum” of Article III standing. *Lujan v.*

1 Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct 2130, 119 L.Ed.2d 351 (1992).

2 To have standing, Plaintiff must first allege that she has “suffered an ‘injury in

3 fact’ - an invasion of a legally protected interest which is (a) concrete and

4 particularized... and (b) actual or imminent, not ‘conjectural’ or ‘hypothetical’...
 5 Id. at 560, 112 S.Ct 2130 (citations omitted). “Second, there must be a causal
 6 connection between the injury and the conduct complained of.” (Id) (quotations
 7 omitted). “Third, it must be likely, as opposed to merely speculative, that the
 8 injury will be redressed by a favorable decision.” (Id) (quotations omitted). As an
 9 “irreducible minimum,” Article III standing requires that the party seeking to
 10 invoke the Court’s jurisdiction show that she personally has suffered some actual
 11 or threatened injury as a result of actions by the Defendant. Valley Forge
 12 Christian College v. American’s United for Separation of Church and State, Inc.,
 13 454 U.S. 464, 472, 102 S.Ct. 752, 758, 70 L.Ed.2d 700 (1982); United
 14 Presbyterian Church in the U.S.A. v. Reagan, 738 F.2d 1375 (D.C. Cir. 1984). In
 15 the complaint, Plaintiff has failed to establish her standing to sue. See Berg v.
 16 Obama, 574 F.2d Supp.2d 509, and cases cited therein; Barnett v. Obama, __ F.
 17 Supp.2d __, 2009 WL 3861788 (C.D. Cal 2009).

18 **1. Plaintiff Cannot Show The Required Concrete, Traceable**
 19 **Injury-In-Fact To Provide Standing Herein**

20 The complaint is utterly devoid of any allegations that Plaintiff has suffered
 21 an injury in fact which is concrete, which has affected her in a personal and
 22 uniquely individual way, and which is fairly traceable to the actions challenged in
 23 the complaint. The injuries alleged by Plaintiff in the complaint appear to be of
 24 two types: First, her subjective fears that her “safety, freedom and security” are
 25 being threatened or destroyed by President Obama (See e.g. ¶ 85 of the complaint,
 26 wherein Plaintiff states: “the harm to the Plaintiff is that her safety, freedom and
 27 security have been destroyed by the Defendant. The Plaintiff is afraid to so (sic)
 28 to bed at night. There has been an increase in the amount of plane activity over

1 the Los Angeles skies from about 2-5 a.m...."); Secondly, the complaint is replete
2 with allegations that Plaintiff is suffering injury as a result of the alleged flouting
3 of the text and principles of the United States Constitution by President Obama.
4 (See, e.g., Complaint, ¶ 41 and 42).

5 Neither of these alleged injuries is sufficient to vest Plaintiff with standing
6 herein. Plaintiff's allegations regarding fears for her safety and security are not
7 sufficiently concrete, nor are they unique and particularized, nor are they actual or
8 imminent. See *United Presbyterian Church v. Reagan*, supra. In analogous cases,
9 it is been held that Plaintiffs alleging fear of, for example, enforcement actions by
10 law enforcement officers, or future prosecution, must show a credible threat of
11 immediate future harm to themselves in order to possess standing to bring such
12 actions. See, e.g. *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, 75
13 L.Ed.2d 675 (1983); *Nelson v. King County*, 895 F.2d 1248 (9th Cir. 1990). In the
14 instant case, the "fears" alleged by Plaintiff in her complaint (e.g. increase in
15 aircraft activity over Los Angeles at night, or INTERPOL controlling the
16 Government, etc.) are neither credible, nor concrete, nor immediate, nor
17 particularized as to her. With respect to Plaintiff's fears that the Constitution is
18 being flouted by the President, it is well settled that an injury to "the generalized
19 interest of all citizens in Constitutional governance" is too abstract to satisfy
20 standing requirements. See *Schlesinger v. Reservists Comm. To Stop The War*,
21 418 U.S. 208, 217, 220, 94 S.Ct 2925, 41 L.Ed.2d 706 (1974).

22 Regarding Plaintiff's specific contentions that President Obama has violated
23 the Constitution and committed "treason" in signing Amended Executive Order
24 12425, in presiding as the Chairperson over the General Assembly of the United
25 Nations in September, 2009, and by accepting the Nobel Peace Prize in October,
26 2009, Plaintiff similarly fails to satisfy standing requirements. The "general right"
27 of "every citizen, to require that the government be administered according to law"
28 is insufficient to establish standing. *Fairchild v. Hughes*, 258 U.S. 126, 129, 42

1 S.Ct 274 (1922); *Barnett v. Obama*, supra, __ F.Supp.2d __, 2009 WL 3861788
2 (C.D. Cal 2009). Plaintiff continually asserts throughout the complaint herein that
3 she is an American citizen who is bringing this action because she fears for the
4 future of her country, which she believes is being led by an unqualified President
5 who has committed unlawful, unconstitutional, and treasonous acts. Her stake in
6 this controversy as a citizen is no greater than that of the millions of other United
7 States citizens, and the harms she alleges are too vague, generalized and not
8 particularized. See *Barnett v. Obama*, supra, __ F.Supp.2d __, 2009 WL 3861788
9 (C.D. Cal 2009).

10 In summary, Plaintiff has not alleged, and cannot allege the requisite
11 “injury-in-fact” to support standing in this case.

12 **2. Plaintiff Cannot Satisfy the Redressability Requirement for**
13 **Standing**

14 As outlined above, an essential element of standing requires that it be likely,
15 as opposed to merely speculative, that the injuries alleged by Plaintiff will be
16 redressed by a favorable decision.

17 Even assuming the doubtful proposition that some of the purported
18 “injuries” alleged by Plaintiff satisfied the Article III requirement of “injury-in-
19 fact,” Plaintiff cannot demonstrate that any injury complained of herein could be
20 redressed by this Court. First, as discussed below, the political question doctrine
21 precludes redress to Plaintiff because such redress would improperly arrogate to
22 this Court jurisdiction over political questions as to the fitness and qualifications
23 of the President, and as to conduct of the President alleged to be treasonous, which
24 the Constitution entrusts exclusively to the House and Senate.

25 Plaintiff further fails to meet the redressability element required for Article
26 III standing because this Court is without power to issue the injunctive relief
27 which is requested in the Complaint. It appears that, in order to redress Plaintiff’s
28 alleged injuries herein, the Court would need to issue an injunction against

1 President Obama that, inter alia, would require him to prove his eligibility and
2 qualifications to be President of the United States, and, upon his failure to do so,
3 would bar him from further holding office, and force him to remove himself from
4 the White House. Moreover, Plaintiff's requested injunction would require this
5 Court to order Congress to arrange for an "emergency election for the people to
6 elect a constitutionally eligible President of the United States" within 60 days.
7 This Court cannot, consistent with the doctrine of separation of powers, issue any
8 such injunctions herein. See, e.g., Newdow v. Bush, 355 F.Supp.2d 265, 280-283
9 (D.D.C. 2005), and cases cited therein; see also the discussion on the coordinate
10 branches of government and the cases cited therein immediately below. Similarly,
11 regarding Plaintiff's requests for declaratory relief, they also fail to satisfy the
12 redressability element necessary for standing because the declaratory relief
13 requested would be a legal nullity. Newdow v. Bush, *supra*.

14 In summary, Plaintiff lacks standing to bring this action because she utterly
15 fails to satisfy the requirement of redressability as well as the requirement of
16 "injury in fact." Accordingly, this case must be dismissed for lack of subject
17 matter jurisdiction.

18 **B. This Case Presents Non-Justiciable Political Questions**

19 It is well settled that when the United States Constitution makes a "textually
20 demonstrable commitment" of an issue to another branch of the government, other
21 than the Judiciary, that issue presents a non-justiciable political question. See
22 Baker v. Carr, 369 U.S. 186, 217, 82 S.Ct 691, 710, 7 L.Ed.2d. 663 (1962). The
23 political question doctrine serves to "restrain the Judiciary from inappropriate
24 interference in the business of the other branches of Government" by prohibiting
25 the Courts from deciding issues that properly rest within the province of the
26 political branches. United States v. Munoz-Flores, 495 U.S. 385, 394, 110 S.Ct.
27 1964, 109 L.Ed.2d 384 (1990). Because "disputes involving political questions lie
28 outside the Article III jurisdiction of federal courts," such cases are to be

¹ dismissed for want of jurisdiction. *Corrie v. Caterpillar*, 503 F.3d 974, 980, 982 (9th Cir. 2007).

The issues sought to be raised by Plaintiff in this case regarding both whether President Obama is a “natural born citizen of the United States,” and therefore qualified to be President, as well as any claims being made by Plaintiff that the President has committed treason or other official misconduct to justify removal from Office, are to be judged, according to the text of the United States Constitution, by the legislative branch and Electoral College of the government, and not by the judicial branch of government.

The Constitution indicates that issues related to a candidate's eligibility for the Office of President rest, in the first instance, with the voters and with their Electoral College, the Constitutionally created body responsible for selecting the President of the United States. See U.S. Constitution, Article II, section 1, cl. 2 (“Each State shall appoint, in such Manner as the Legislature thereof may direct,” electors for the President and Vice President); Id. Amend. XXIII, section 1; Williams v. Rhodes, 393 U.S. 23, 43, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) (Harlan, J., concurring) (“The [Electoral] College was created to permit the most knowledgeable members of the community to choose the executive of a nation.”).

19 The Constitution's commitment to the Electoral College of the
20 responsibility to select the President includes the authority to decide whether a
21 presidential candidate is qualified for office because the examination of a
22 candidate's qualifications is an integral component of the electors' decision-
23 making process.¹

25 'Explaining this provision of the Constitution, Alexander Hamilton stated
26 that: "the people of each State shall choose a number of persons as electors, equal
27 to the number of senators and representatives of such State in the national
28 government who shall assemble within the State, and vote for some fit person as
President." (emphasis added). See Federalist Papers, No. 68.

1 The Constitution also provides that, after the Electoral College has voted,
2 further review of the presidential candidate's eligibility for office, to the extent
3 such review is required, rests with Congress. Where no candidate receives a
4 majority of the electoral votes, the Constitution commits to the House of
5 Representatives the authority to select the President and, in so doing, to evaluate
6 the candidates' qualifications. See U.S. Constitution Amendment XII. Similarly,
7 the Twentieth Amendment exclusively grants Congress the responsibility for
8 selecting a President when a candidate elected by the Electoral College does not
9 satisfy the Constitution's eligibility requirements. See *Id.* Amendment XX, § 3
10 ("the Congress may by law provide for the case wherein neither a President-elect
11 nor a Vice President-elect shall have qualified, declaring who shall then act as
12 President or the manner in which one who is to act shall be selected, and such
13 person shall act accordingly until a President or Vice President shall have
14 qualified."). Thus, review of Presidential qualifications after the Electoral College
15 has acted rests in Congress, pursuant to the Constitution.

16 The Constitution's textual commitment of this responsibility is a
17 responsibility that Congress has embraced. Both the House and Senate have
18 standing committees with jurisdiction to decide questions relating to Presidential
19 elections. See S.R. 25.1n(1)(5) (the Senate Committee on Rules and
20 Administration has jurisdiction over "proposed legislation, messages, petitions,
21 memorials, and other matters relating to . . . federal elections generally, including
22 the election of the President, Vice President, and members of Congress, as well as
23 "Presidential succession") (copy attached for Court's convenience as Exhibit 1
24 hereto). See also H.R. 10(j)(12). (Copy attached as Exhibit 2).

25 Federal legislation further details the process for counting electoral votes in
26 the Congress. Under 3 U.S.C. § 15, Congress is directed to be in session on the
27 appropriate date to count the electoral votes for President, with the President of the
28 Senate presiding. The statute further directs that the electoral votes be counted,

1 and then the results be presented to the President of the Senate, who shall then
2 "announce the state of the vote." The statute then provides a mechanism for
3 objections to be registered and resolved in the following language:

4 "[e]very objection shall be made in writing, and shall
5 state clearly and concisely, and without argument, the
6 ground thereof, and shall be signed by at least one
7 Senator and one Member of the House of
8 Representatives before the same shall be received. When
9 all objections so made. . .shall have been received and
10 read, the Senate shall thereupon withdraw, and such
11 objections shall be submitted to the Senate for its
12 decision; and the Speaker of the House of
13 Representatives shall, in like manner, submit such
14 objections to the House of Representatives for its
15 decision."

16 In summary, it is clear, from the text of the Constitution, and the relevant
17 statutory law implementing the Constitution's textual commitments, that
18 challenges to the qualifications of a candidate for President can, in the first
19 instance, be presented to the voting public before the election, and, once the
20 election is over, can be raised as objections as the electoral votes are counted in
21 the Congress. Therefore, challenges such as those purportedly raised in this case
22 are committed, under the Constitution, to the electors, and to the Legislative
23 branch.

24 Regarding Plaintiff's claims and allegations that the President has
25 committed misconduct and, indeed, treason, while in Office, the Constitution also
26 makes a textual commitment of the power to review the President's conduct and
27 continuing service to a branch other than the Judiciary, and those allegations also
28 include political questions. See U.S. Constitution Amendment XXV; Baker,

1 supra, 369 U.S. at 217. Likewise, Plaintiff's injunctive relief requests,
 2 summarized above, related to the removal of the President from Office, are equally
 3 committed by the text of the Constitution to a coordinate branch. See U.S.
 4 Constitution Article I, § 2, cl. 5; Article I, § 3, cl. 6; *Nixon v. United States*, 938
 5 F.2d 239, at 243 ("the framers simply assumed that the Courts had nothing
 6 whatever to do with impeachment.") (D.C. Cir. 1991), aff'd 506 U.S. 224, 113
 7 S.Ct. 732, 122 L.Ed.2d. 1 (1992); *Hyland v. Clinton*, 208 F.3d 213, 2000 WL
 8 125876 (6th Cir. 2000).

9 Barack Obama has been President of the United States for some eighteen
 10 months. The issues which Plaintiff seeks to litigate in this case, and the
 11 allegations which she makes in her complaint, relate to the fitness, competence,
 12 and qualifications of President Obama to continue to serve in Office. As the D.C.
 13 Circuit observed under vastly different circumstances, these issues are political
 14 questions for a very good reason:

15 "although the primary reason for invoking the political
 16 question doctrine in our case is the textual commitment
 17 . . . to the Senate, the need for finality also demands it.

18 See Baker v. Carr, 369 U.S. at 210, 82 S.Ct. 706 . . .

19 [T]he intrusion of the Courts would expose the political
 20 life of the country to months, or perhaps years, of chaos.
 21 Even if the Courts qualified a finding of justiciability
 22 with a rule against stays or specific relief of any kind,
 23 their review would undermine the new President's
 24 legitimacy . . . for at least as long as the process took.

25 And a declaratory action without final relief awarding
 26 the Office to one person or the other could confound
 27 matters indefinitely." (emphasis supplied).

28 *Nixon v. United States*, 938 F.2d 239, at 245 (D.C. Cir. 1991), aff'd, 506 U.S. 224,

1 113 S.Ct. 732, 122 L.Ed.2d. 1 (1992).

2 Litigation of these issues in this Court would be an equal intrusion of the
3 Court into the political life of the other branches of government. Such an
4 intrusion would do violence to the principle of separation of powers, an equally-
5 important basis to recognize that such political questions are outside the
6 jurisdiction of the Court. See Baker v. Carr, supra, 369 U.S. 210 (“The non-
7 justiciability of a political question is primarily a function of the separation of
8 powers.”); Id. at 217 (setting forth the elements typically describing a political
9 question).

10 In summary, the aforesaid issues which Plaintiff seeks to litigate in this case
11 are, under the Constitution, within the sole and exclusive jurisdiction of the House
12 of Representatives and the Senate of the United States. Additionally, litigation of
13 these issues in this Court, and the granting of some or all of the relief sought by
14 Plaintiff would violate the doctrine of separation of powers. Accordingly, this
15 case must be dismissed, because it presents non-justiciable political questions.

16 **IV.**

17 **CONCLUSION**

18 The Complaint should be dismissed because Plaintiff lacks standing to use
19 the power of this Court to force President Obama from office and also because any
20 jurisdiction to do so resides not in this Court but in a co-equal branch of
21 government. Although Plaintiff may think that this Court is the proper forum to
22 decide such Constitutional issues, the Framers of the Constitution did not. The
23 checks and balances within the text of the Constitution as well as the case law
24 interpreting it preclude a private citizen from having standing or a district court
25 from having jurisdiction to force a sitting President from office.

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1 Accordingly, Plaintiff's action should be dismissed in its entirety without
2 leave to amend.

3 Respectfully submitted,

4 DATED: *6/25/10*

5 ANDRÉ BIROTTÉ JR.
United States Attorney
6 LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division

7 
8 DAVID A. DeJUTE
9 Assistant United States Attorney
Attorneys for Defendant Barack Obama

10 DATED: *6/25/10*

11 ANDRÉ BIROTTÉ JR.
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